

103^D CONGRESS
2^D SESSION

S. 1863

To amend title II of the Social Security Act to institute certain reforms relating to the provision of disability insurance benefits based on substance abuse and relating to representative payees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23 (legislative day, FEBRUARY 22), 1994

Mr. COHEN (for himself, Mr. DOLE, Mrs. KASSEBAUM, Mr. KOHL, Mr. LUGAR, Mr. THURMOND, Mr. GRASSLEY, Mr. WARNER, Mr. DOMENICI, Mr. CHAFEE, Mr. BENNETT, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title II of the Social Security Act to institute certain reforms relating to the provision of disability insurance benefits based on substance abuse and relating to representative payees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Social Security Disabil-
5 ity and Rehabilitation Act of 1994”.

1 **SEC. 2. REFORM OF MONTHLY INSURANCE BENEFITS**
2 **BASED ON DISABILITY INVOLVING SUB-**
3 **STANCE ABUSE.**

4 (a) SOCIAL SECURITY DISABILITY INSURANCE.—

5 (1) IN GENERAL.—Section 223 of the Social
6 Security Act (42 U.S.C. 423) is amended by adding
7 at the end the following new subsection:

8 “Limitation on Payment of Benefits by Reason of
9 Substance Abuse

10 “(j)(1)(A) Notwithstanding any other provision of
11 this title, no individual whose disability is based in whole
12 or in part on a medical determination that the individual
13 is a drug addict or alcoholic shall be entitled to benefits
14 under this title based on such disability with respect to
15 any month, unless such individual—

16 “(i) is undergoing, or on a waiting list for, any
17 medical or psychological treatment that may be ap-
18 propriate for such individual’s condition as a drug
19 addict or alcoholic (as the case may be) and for the
20 stage of such individual’s rehabilitation at an insti-
21 tution or facility approved for purposes of this para-
22 graph by the Secretary (so long as access to such
23 treatment is reasonably available, as determined by
24 the Secretary), and

25 “(ii) demonstrates in such manner as the Sec-
26 retary requires, including at a continuing disability

1 review not later than one year after such determina-
2 tion, that such individual is complying with the
3 terms, conditions, and requirements of such treat-
4 ment and with the requirements imposed by the Sec-
5 retary under subparagraph (B).

6 “(B) The Secretary shall provide for the monitoring
7 and testing of all individuals who are receiving benefits
8 under this title and who as a condition of such benefits
9 are required to be undergoing treatment and complying
10 with the terms, conditions, and requirements thereof as
11 described in subparagraph (A), in order to assure such
12 compliance and to determine the extent to which the im-
13 position of such requirements is contributing to the achieve-
14 ment of the purposes of this title. The Secretary may re-
15 tain jurisdiction in the case of a hearing before the Sec-
16 retary under this title to the extent the Secretary deter-
17 mines necessary to carry out the preceding sentence. The
18 Secretary shall annually submit to the Congress a full and
19 complete report on the Secretary’s activities under this
20 paragraph.

21 “(C) The representative payee and the referral and
22 monitoring agency for any individual described in subpara-
23 graph (A) shall report to the Secretary any noncompliance
24 with the terms, conditions, and requirements of the treat-

1 ment described in subparagraph (A) and with the require-
2 ments imposed by the Secretary under subparagraph (B).

3 “(D)(i) If the Secretary finds that an individual is
4 not complying with the terms, conditions, and require-
5 ments of the treatment described in subparagraph (A), or
6 with the requirements imposed by the Secretary under
7 subparagraph (B), or both, the Secretary, in lieu of termi-
8 nation, may suspend such individual’s benefits under this
9 title until compliance has been reestablished, including
10 compliance with any additional requirements determined
11 to be necessary by the Secretary.

12 “(ii) Any period of suspension under clause (i) shall
13 be taken into account in determining any 24-month period
14 described in subparagraph (E) and shall not be taken into
15 account in determining the 36-month period described in
16 such subparagraph.

17 “(E)(i) Except as provided in clause (ii), no individ-
18 ual described in subparagraph (A) shall be entitled to ben-
19 efits under this title for any month following the 24-month
20 period beginning with the determination of the disability
21 described in such subparagraph.

22 “(ii) If at the end of the 24-month period described
23 in clause (i), the individual furnishes evidence in accord-
24 ance with subsection (d)(5) that the individual continues
25 to be under a disability based in whole or in part on a

1 medical determination that the individual is a drug addict
2 or alcoholic, such individual shall continue to be entitled
3 to benefits under this title based on such disability.

4 “(iii) Subject to clause (iv), if such an individual con-
5 tinues to be entitled to such benefits for an additional 24-
6 month period following a determination under clause (ii),
7 clauses (i) and (ii) shall apply with regard to any further
8 entitlement to such benefits following the end of such ad-
9 ditional period.

10 “(iv) In no event shall such an individual be entitled
11 to benefits under this title for more than a total of 36
12 months, unless upon the termination of the 36th month
13 such individual furnishes evidence in accordance with sub-
14 section (d)(5) that the individual is under a disability
15 which is not related in part to a medical determination
16 that the individual is a drug addict or alcoholic.

17 “(2)(A) Any benefits under this title payable to any
18 individual referred to in paragraph (1), including any ben-
19 efits payable in a lump sum amount, shall be payable only
20 pursuant to a certification of such payment to a qualified
21 organization acting as a representative payee of such indi-
22 vidual pursuant to section 205(j).

23 “(B) For purposes of subparagraph (A) and section
24 205(j)(4), the term ‘qualified organization’—

1 “(i) shall have the meaning given such term by
2 section 205(j)(4)(B), and

3 “(ii) shall mean an agency or instrumentality of
4 a State or a political subdivision of a State.

5 “(3) Monthly insurance benefits under this title
6 which would be payable to any individual (other than the
7 disabled individual to whom benefits are not payable by
8 reason of this subsection) on the basis of the wages and
9 self-employment income of such a disabled individual but
10 for the provisions of paragraph (1), shall be payable as
11 though such disabled individual were receiving such bene-
12 fits which are not payable under this subsection.”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 205(j)(1) of such Act (42
15 U.S.C. 405(j)(1)) is amended by inserting “, or
16 in the case of any individual referred to in sec-
17 tion 223(j)(1)(A)” after “thereby”.

18 (B) Section 205(j)(2)(D)(ii)(II) of such
19 Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended
20 by striking “legally incompetent or under the
21 age of 15” and inserting “legally incompetent,
22 under the age of 15, or a drug addict or alco-
23 holic referred to in section 223(j)(1)(A)”.

1 (b) SUPPLEMENTAL SECURITY INCOME.—Paragraph
2 (3) of section 1611(e) of the Social Security Act (42
3 U.S.C. 1382(e)) is amended to read as follows:

4 “(3)(A)(i) No person who is an aged, blind, or dis-
5 abled individual solely by reason of disability (as deter-
6 mined under section 1614(a)(3)) shall be an eligible indi-
7 vidual or eligible spouse for purposes of this title with re-
8 spect to any month if such individual’s disability is based
9 in whole or in part on a medical determination that the
10 individual is a drug addict or alcoholic, unless such indi-
11 vidual—

12 “(I) is undergoing, or on a waiting list for, any
13 medical or psychological treatment that may be ap-
14 propriate for such individual’s condition as a drug
15 addict or alcoholic (as the case may be) and for the
16 stage of such individual’s rehabilitation at an insti-
17 tution or facility approved for purposes of this para-
18 graph by the Secretary (so long as access to such
19 treatment is reasonably available, as determined by
20 the Secretary), and

21 “(II) demonstrates in such manner as the Sec-
22 retary requires, including at a continuing disability
23 review not later than one year after such determina-
24 tion, that such individual is complying with the
25 terms, conditions, and requirements of such treat-

1 ment and with the requirements imposed by the Sec-
2 retary under clause (ii).

3 “(ii) The Secretary shall provide for the monitoring
4 and testing of all individuals who are receiving benefits
5 under this title and who as a condition of such benefits
6 are required to be undergoing treatment and complying
7 with the terms, conditions, and requirements thereof as
8 described in clause (i), in order to assure such compliance
9 and to determine the extent to which the imposition of
10 such requirements is contributing to the achievement of
11 the purposes of this title. The Secretary may retain juris-
12 diction in the case of a hearing before the Secretary under
13 this title to the extent the Secretary determines necessary
14 to carry out the preceding sentence. The Secretary shall
15 annually submit to the Congress a full and complete report
16 on the Secretary’s activities under this subparagraph.

17 “(iii) The representative payee and the referral and
18 monitoring agency for any individual described in clause
19 (i) shall report to the Secretary any noncompliance with
20 the terms, conditions, and requirements of the treatment
21 described in clause (i) and with the requirements imposed
22 by the Secretary under clause (ii).

23 “(iv)(I) If the Secretary finds that an individual is
24 not complying with the terms, conditions, and require-
25 ments of the treatment described in clause (i), or with the

1 requirements imposed by the Secretary under clause (ii),
2 or both, the Secretary, in lieu of termination, may suspend
3 such individual's benefits under this title until compliance
4 has been reestablished, including compliance with any ad-
5 ditional requirements determined to be necessary by the
6 Secretary.

7 “(II) Any period of suspension under subclause (I)
8 shall be taken into account in determining any 24-month
9 period described in clause (v) and shall not be taken into
10 account in determining the 36-month period described in
11 such clause.

12 “(v)(I) Except as provided in subclause (II), no indi-
13 vidual described in clause (i) shall be entitled to benefits
14 under this title for any month following the 24-month pe-
15 riod beginning with the determination of the disability de-
16 scribed in such clause.

17 “(II) If at the end of the 24-month period described
18 in subclause (I), the individual furnishes evidence in ac-
19 cordance with section 223(d)(5) that the individual contin-
20 ues to be under a disability based in whole or in part on
21 a medical determination that the individual is a drug ad-
22 dict or alcoholic, such individual shall be entitled to bene-
23 fits under this title based on such disability.

24 “(III) Subject to subclause (IV), if such an individual
25 continues to be entitled to such benefits for an additional

1 24-month period following a determination under
2 subclause (II), subclauses (I) and (II) shall apply with re-
3 gard to any further entitlement to such benefits following
4 the end of such additional period.

5 “(IV) In no event shall such an individual be entitled
6 to benefits under this title for more than a total of 36
7 months, unless upon the termination of the 36th month
8 such individual furnishes evidence in accordance with sec-
9 tion 223(d)(5) that the individual is under a disability
10 which is not related in part to a medical determination
11 that the individual is a drug addict or alcoholic.

12 “(B)(i) Any benefits under this title payable to any
13 individual referred to in subparagraph (A), including any
14 benefits payable in a lump sum amount, shall be payable
15 only pursuant to a certification of such payment to a
16 qualified organization acting as a representative payee of
17 such individual pursuant to section 1631(a)(2)(A)(ii).

18 “(ii) For purposes of clause (i) and section
19 1631(a)(2)(D), the term ‘qualified organization’—

20 “(I) shall have the meaning given such term by
21 section 1631(a)(2)(D)(ii), and

22 “(II) shall mean an agency or instrumentality
23 of a State or a political subdivision of a State.”

24 (c) EFFECTIVE DATES; AUTHORIZATIONS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to benefits payable for determinations of
4 disability made 90 or more days after the date of
5 the enactment of this Act.

6 (2) CURRENT DETERMINATIONS.—

7 (A) IN GENERAL.—With respect to any in-
8 dividual described in subparagraph (B), the
9 Secretary of Health and Human Services shall
10 provide during the 3-year period beginning after
11 the date of the enactment of this Act for the
12 application of the amendments made by this
13 section to such individual with the time periods
14 described in such amendments to begin upon
15 such application.

16 (B) INDIVIDUAL DESCRIBED.—An individ-
17 ual is described in this subparagraph if such in-
18 dividual is entitled to benefits under title II or
19 XVI of the Social Security Act based on a dis-
20 ability determined before the date described in
21 paragraph (1) to be based in whole or in part
22 on a medical determination that the individual
23 is a drug addict or alcoholic.

24 (3) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated such sums

1 as may be necessary to carry out the purposes of the
2 provisions of, and the amendments made by, this
3 section.

4 **SEC. 3. PRIORITY OF TREATMENT.**

5 The Secretary of Health and Human Services,
6 through the Administrator of the Substance Abuse and
7 Mental Health Services Administration, shall assure that
8 every individual receiving disability benefits under title II
9 or XVI of the Social Security Act based in whole or in
10 part on a medical determination that the individual is a
11 drug addict or alcoholic be given high priority for treat-
12 ment through entities supported by the various States
13 through any substance abuse block grant authorized under
14 law.

15 **SEC. 4. ESTABLISHMENT OF REFERRAL MONITORING**
16 **AGENCIES REQUIRED IN ALL STATES.**

17 The Secretary of Health and Human Services shall,
18 within 1 year of the date of the enactment of this Act,
19 provide for the establishment of referral and monitoring
20 agencies for each State for the purpose of carrying out
21 the treatment requirements under sections 223(j)(1) and
22 1611(e)(3)(A) of the Social Security Act (42 U.S.C.
23 423(j)(1) and 1382(e)(3)(A)).

1 **SEC. 5. PROCEEDS FROM CERTAIN CRIMINAL ACTIVITIES**
2 **CONSTITUTE SUBSTANTIAL GAINFUL EM-**
3 **PLOYMENT.**

4 (a) SOCIAL SECURITY DISABILITY INSURANCE.—
5 Section 223(d)(4) of the Social Security Act (42 U.S.C.
6 423(d)(4)) is amended by inserting the following after the
7 first sentence: “If an individual engages in a criminal ac-
8 tivity to support substance abuse, any proceeds derived
9 from such activity shall demonstrate such individual’s abil-
10 ity to engage in substantial gainful activity.”.

11 (b) SUPPLEMENTAL SECURITY INCOME.—Section
12 1614(a)(3)(D) of the Social Security Act (42 U.S.C.
13 1382(a)(3)(D)) is amended by inserting the following
14 after the first sentence: “If an individual engages in a
15 criminal activity to support substance abuse, any proceeds
16 derived from such activity shall demonstrate such individ-
17 ual’s ability to engage in substantial gainful activity.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to disability determinations con-
20 ducted on or after the date of the enactment of this Act.

21 **SEC. 6. CONSISTENT PENALTY PROVISIONS FOR SSDI AND**
22 **SSI PROGRAMS.**

23 (a) FELONY PENALTIES FOR FRAUD.—

24 (1) IN GENERAL.—Subsection (a) of section
25 1631 of the Social Security Act (42 U.S.C. 1383a)
26 is amended by striking “shall be guilty of a mis-

1 demeanor and upon conviction thereof shall be fined
2 not more than \$1,000 or imprisoned for not more
3 than one year, or both” and inserting “shall be
4 guilty of a felony and upon conviction thereof shall
5 be fined under title 18, United States Code, or im-
6 prisoned for not more than five years, or both”.

7 (2) REPRESENTATIVE PAYEES.—

8 (A) SSDI.—Subsections (b) and (c) of sec-
9 tion 208 of such Act (42 U.S.C. 408) are
10 amended to read as follows:

11 “(b)(1) Any person or other entity who is convicted
12 of a violation of any of the provisions of this section, if
13 such violation is committed by such person or entity in
14 his role as, or in applying to become, a certified payee
15 under section 205(j) on behalf of another individual (other
16 than such person’s spouse or an entity described in section
17 223(j)(2)(B)(ii)), shall be guilty of a felony and upon con-
18 viction thereof shall be fined under title 18, United States
19 Code, or imprisoned for not more than five years, or both.

20 “(2) In any case in which the court determines that
21 a violation described in paragraph (1) includes a willful
22 misuse of funds by such person or entity, the court may
23 also require that full or partial restitution of such funds
24 be made to the individual for whom such person or entity
25 was the certified payee.

1 “(3) Any person or entity convicted of a felony under
2 this section or under section 1632(b) may not be certified
3 as a payee under section 205(j).

4 “(c) For the purpose of subsection (a)(7), the terms
5 ‘social security number’ and ‘social security account num-
6 ber’ mean such numbers as are assigned by the Secretary
7 under section 205(c)(2) whether or not, in actual use, such
8 numbers are called social security numbers.”

9 (B) SSI.—Subsection (b)(1) of section
10 1632 of such Act (42 U.S.C. 1383a) is amend-
11 ed by striking “(other than such person’s
12 spouse)” and all that follows through the period
13 and inserting “(other than such person’s spouse
14 or an entity described in section
15 1611(e)(3)(B)(ii)(II)), shall be guilty of a fel-
16 ony and upon conviction thereof shall be fined
17 under title 18, United States Code, or impris-
18 oned for not more than five years, or both.”

19 (b) CIVIL ADMINISTRATIVE PENALTIES.—

20 (1) SSDI.—Section 208 of the Social Security
21 Act (42 U.S.C. 408) is amended by adding at the
22 end the following new subsections:

23 “(e) For administrative penalties for false claims and
24 statements with respect to which an individual or other

1 entity knows or has reason to know such falsity, see chap-
2 ter 38 of title 31, United States Code.

3 “(f) In the case of the second or subsequent imposi-
4 tion of an administrative or criminal penalty on any per-
5 son or other entity under this section, the Secretary may
6 exclude such person or entity from participation in any
7 program under this title and titles V, XVI, XVIII, and
8 XX, and may direct that such person or entity be excluded
9 from any State health care program (as defined in section
10 1128(h)) and any other Federal program as provided by
11 law.”

12 (2) SSI.—

13 (A) IN GENERAL.—Section 1632 of such
14 Act (42 U.S.C. 1383a) is amended by adding at
15 the end the following new subsections:

16 “(c) For administrative penalties for false claims and
17 statements with respect to which an individual or other
18 entity knows or has reason to know such falsity, see chap-
19 ter 38 of title 31, United States Code.

20 “(d) In the case of the second or subsequent imposi-
21 tion of an administrative or criminal penalty on any per-
22 son or other entity under this section, the Secretary may
23 exclude such person or entity from participation in any
24 program under this title and titles II, V, XVIII, and XX,
25 and may direct that such person or entity be excluded

1 from any State health care program (as defined in section
2 1128(h)) and any other Federal program as provided by
3 law.”

4 (B) CONFORMING AMENDMENT.—The
5 heading for section 1632 of such Act (42
6 U.S.C. 1383a) is amended by striking “FOR
7 FRAUD”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall be effective on or after the date of the
10 enactment of this Act.

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